

Master Services Agreement
Mutually Agreed

~~2024~~²⁰²⁵ This Master Services Agreement is entered into on this 6th day of January, 2024, and is by and between Florida Municipal Power Agency, a governmental joint action agency organized and existing pursuant to Florida law, with its office located at 8553 Commodity Circle, Orlando, Florida 32819, ("FMPA") and Burns & McDonnell Engineering Company, Inc., with its principle place of business located at 9400 Ward Parkway, Kansas City, Missouri 64114 ("Consultant").

FMPA is a municipal electric joint action agency formed pursuant to section 163.01, Florida Statutes, and exercises powers pursuant to section 163.01 and chapter 361, part II, Florida Statutes.

Consultant is a Missouri corporation offering engineering consulting services.

FMPA issued RFQ 2024-201 to find qualified professionals to perform continuing consulting services for assigned projects (hereinafter referred to as "Continuing Service Projects").

The parties desire for Consultant to perform the continuing consulting services in accordance with prior, mutually agreed upon conditions.

Now therefore, for and in consideration of the premises and mutual covenants made herein, the parties agree as follows:

Section 1. Requests for Services

Consultant shall provide to FMPA consulting services (the "Services") for Continuing Service Projects in accordance with written "Requests for Services" issued by FMPA and agreed to by Consultant from time to time during the term of this agreement. Such Requests for Services shall be attached as separate Attachment(s) "A" hereto. Such Requests for Services shall make specific reference to this agreement and shall be subject to FMPA's and Consultant's written acceptance.

Upon written acceptance, each Request for Services shall be incorporated into and become a material part of this agreement. However, a Request for Services shall not amend or add to this agreement in any respect except to describe the following: the scope of services for the Continuing Service Project (the "Project Scope of Services"), the schedule therefore (the "Project Schedule"), any additional responsibilities of FMPA not already outlined in Section 7 herein ("Additional FMPA Responsibilities"), the applicable compensation terms (the "Project Compensation" further described in Section 4 herein), and any additional insurance requirements related to the Continuing Service Project (the "Project Specific Insurance Requirements" as further defined in Section 10(e) herein). Additional or conflicting contractual terms or conditions may be

added only by formal written amendment to this agreement and not through Requests for Services. Any such additional or conflicting terms and conditions contained in Requests for Services shall be of no force or effect.

When Consultant believes it has completed the Services in accordance with each Request for Services, Consultant shall provide to FMPA a written notification of completion. Within twenty (20) Business Days (the "FMPA Response Period") FMPA shall advise Consultant in writing of (i) its agreement with the notification of completion, or (ii) any deficiencies in the Services for which Consultant is responsible under the Request for Services, or (iii) notice that FMPA will be reasonably delayed in providing a response and identify the number of days required to respond. As soon as Consultant corrects all deficiencies identified by FMPA, FMPA shall accept the Services under that Request for Services in writing, or upon expiration of FMPA Response Period without such required response from FMPA, the completion of the Services for the Request for Services shall be deemed accepted. Consultant has an affirmative obligation to complete all Requests for Services in accordance with this agreement, including the standard of care as described in Section 6 herein.

FMPA or Consultant may initiate a change to a Request for Services (a "Change Order") by advising the other party in writing that a change is believed to be necessary, including but not limited to changes in statute, regulation, bylaw, standard or code that impact the Project Compensation or project schedule. As soon thereafter as practicable, Consultant shall prepare and forward to FMPA a cost estimate of the change which shall include the adjustment to the Project Compensation, schedule of payments, project schedule, and completion date applicable thereto. FMPA shall advise Consultant in writing of its approval or disapproval of the Change Order. If FMPA approves the Change Order, Consultant shall perform the Services as changed. If the Change Order requested by Consultant is denied by FMPA, however the Change Order is of such a nature that the Services cannot be continued or completed unless such Change Order is approved by FMPA, Consultant shall have the option to cease further work pertaining to that particular Request for Services and FMPA shall remit full payment to Consultant for all charges and fees performed up to the date of stoppage of the Services.

For any Continuing Service Project identified as a "Major Project" in a Request for Services, FMPA and Consultant shall each appoint a representative with executive authority having a broad general knowledge of the Major Project, but not involved in the Major Project on a detailed day-to-day basis. These representatives shall perform an oversight function to review the Major Project monthly, or as otherwise agreed, and take or recommend action pursuant to items of major and material impact to the Major Project. These items would include but would not necessarily be limited to budget, schedule, Consultant's obligations and deliverables, FMPA's obligations and deliverables, contractor or supplier performance, actual or potential major change orders, etc. Meetings may also include staff or others, as deemed necessary by the representatives.

Section 2. Consultants' Competitive Negotiation Act

Both Parties understand, acknowledge and agree that this agreement constitutes a "continuing contract" as defined in Section 287.055(2)(g), Florida Statutes. FMPA will have the right to contract for consulting services from Consultant or any other firm under a separate agreement while this agreement is in effect.

For any lump-sum or cost-plus-a-fixed-fee Service over the threshold amount provided in Section 287.017, Florida Statutes, as amended, for CATEGORY FOUR, Consultant shall execute a truth-in-negotiation certificate, as provided by FMPA, stating that the wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of entering into the subject Request for Services. The original lump-sum amount and any additions thereto shall be adjusted to exclude any significant sums by which FMPA determines the lump-sum amount was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such lump-sum amount adjustments must be made within one (1) year of the completion of services as provided for herein.

Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For the breach or violation of this provision, FMPA shall have the right to terminate this agreement without liability and, at its discretion, to deduct from the Project Compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Section 3. Termination

FMPA shall have the right to terminate this agreement upon written notice to Consultant, and Consultant shall terminate performance of Services based on remaining Services identified by Consultant and approved by FMPA on a schedule acceptable to FMPA. In the event of termination, FMPA shall pay Consultant for all Services previously performed and remaining Services as identified and approved by FMPA in accordance with Section 1 herein, which have been performed to the standard of care as described in Section 6 herein.

Section 4. Project Compensation and Payment

FMPA shall pay and Consultant shall accept in full consideration for the Services the Project Compensation (including the cost of any project specific insurance

requirements provided to FMPA pursuant to Section 10(e) herein), which shall be described in each Request for Services.

Consultant will submit to FMPA monthly invoices for Services performed in accordance with each Request for Services. Each invoice will be submitted by about the fifteenth (15th) day of the month following the month during which such Services were performed. FMPA agrees to pay Consultant's invoice within thirty (30) days after the invoice is received by FMPA.

For Services rendered on a time plus materials basis, invoices will identify (a) individuals working on the Continuing Service Project, (b) their hourly rate based on the negotiated rate sheet, (c) the actual time charged to the Continuing Service Project; and (d) the total amount invoiced to the Continuing Service Project to date including any non-labor expenses. For lump sum services, FMPA and Consultant shall agree upon a payment schedule in each applicable Request for Services, and Consultant shall invoice FMPA in accordance with the agreed upon payment schedule.

FMPA shall have the right to audit and inspect Consultant's records and accounts covering direct costs hereunder at all reasonable times during the performance of the Services and for a period of two (2) years after completion of the Services and final payment in accordance with the Request for Services thereof; provided, however, that the purpose of any such audit shall be only for verification of such costs.

Section 5. Independent Contractor Status.

It is understood and agreed that Consultant is an independent contractor, is not an agent or employee of FMPA, and is not authorized to act on behalf of FMPA. Consultant agrees not to hold him or herself out as, or give any person any reason to believe that he or she is an employee, agent, or partner of FMPA. Consultant will not be eligible for any employee benefits, nor will FMPA make deductions from any amounts payable to Consultant for taxes or insurance. All payroll and employment taxes, insurance, and benefits shall be the sole responsibility of Consultant. Consultant retains the right to provide services for others during the term of this agreement and is not required to devote his or her services exclusively for FMPA.

Section 6. Consultant's Responsibilities and Standard of Care.

The Services and any deliverables provided pursuant to this Agreement shall comply with applicable federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements in effect during the term of this agreement. Consultant represents that the Services shall be performed with the care, skill, and diligence customarily provided by a Registered Professional Engineer performing similar services in the same geographical area ("Standard of Care"). If any modifications or alterations are required to correct deviations from the quality of

Services stipulated, Consultant will, at no cost to FMPA and on a schedule agreeable to FMPA, re-perform the necessary Services to correct such deviations if discovered and reported to Consultant within five (5) years from the date of Consultant's final invoice for the Services under the applicable Request for Services. Except as expressly stated otherwise on the Request for Services, the warranty remedy contained in this Section 6 is FMPA's sole and exclusive remedy for Consultant's defective Work, and Consultant makes no other warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose.

It is understood that Consultant is providing its opinion and advice as a service to FMPA. It is recognized that Consultant is not an "authorized agent" of FMPA and that at no time may Consultant commit FMPA or any of its affiliates to any commercial transaction without written direction to do so. Further, FMPA at its own and sole discretion may choose or not choose to implement or transact with other third parties based upon Consultant's recommendation or advice.

Section 7. FMPA's Responsibilities

FMPA shall at such times as may be required by Consultant for the successful and expeditious completion of the Services:

- (a) Obtain all permits and licenses required to be taken out in the name of FMPA which are necessary for the performance of the Services;
- (b) Provide Consultant with all available information, data, and specifications necessary for the completion of the Services, including without limitation geotechnical and other site condition information (unless noted in Request for Services as being obtained by FMPA based on specification developed by Consultant). Unless otherwise stated in the Request for Services, Consultant shall be entitled to rely on all such drawings, data and information including but not limited to, existing drawings and as-constructed drawings provided by FMPA without the need to independently verify the locations, dimensions, utility services, and other depicted information;
- (c) Appoint an individual who shall be authorized to act on behalf of the FMPA, with whom the Consultant may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the FMPA as to all matters pertaining to this Contract and the performance of the Parties hereunder;
- (d) Advise Consultant of the existence and undertake the abatement and disposal of all "Hazardous Materials" that constitute "Pre-Existing Contamination" in accordance with the following:
 - 1) "Hazardous Materials" are materials or substances, which, because of their chemical, physical, or biological nature, pose a risk to life, health, or property when released, including all materials and substances defined or

classified as hazardous or toxic by applicable Federal, State, or local laws, rules, regulations, and classifications in effect on the date of the Request for Services.

2) "Pre-existing Contamination" is any Hazardous Material present at any site at, or for, which Consultant shall perform any Services that was not brought onto such site or sites by the Consultant.

3) FMPA shall advise Consultant of the existence and undertake the abatement, disposal, and/or mitigation of all Hazardous Materials that constitute a Pre-existing Contamination herein, at any site at, or for, which Consultant shall perform any service.

4) FMPA agrees to release, defend, indemnify, and hold the Consultant harmless, to the extent permitted by law, from and against any and all liability that may in any manner arise in any way directly or indirectly caused by such Pre-existing Contamination except if, and then only to the extent, such liability is caused by the Consultant's negligence, gross negligence or willful misconduct.

5) Consultant shall notify FMPA of any Pre-existing Contamination known to Consultant.

Section 8. Documents

Consultant agrees to furnish and provide to FMPA, for each Continuing Service Project, copies of all plans, specifications, drawings, project manuals, and other documents (except correspondence) prepared by Consultant under this agreement, at its own expense, as detailed in each Request for Services. The copies shall be furnished as they are prepared and completed by Consultant, and if FMPA requires additional copies, Consultant shall promptly furnish the copies to FMPA at a reasonable cost for the reproduction.

FMPA exclusively retains all ownership rights to all deliverables developed under this Agreement. Any and all deliverables are prepared specifically, and intended to be used exclusively for the Project and location contemplated under the Agreement. Any completion, extension, or modification by FMPA or others without participation by Consultant, or written authorization by Consultant, or any reuse by FMPA of Consultant's deliverables other than for the specific purpose intended will be at FMPA's sole risk and without liability or legal exposure to Consultant.

Consultant shall retain ownership of Consultant's intellectual property, (including standard drawings and specifications, computer programs and model, copyrights, trade secrets, patented, patent pending, or other patentable technology, processes, or

business practices). Consultant grants to FMPA, a non-transferable, irrevocable, and perpetual royalty free license to retain and use all such intellectual property for purposes in connection with the Request for Services and FMPA's associated project upon full payment by FMPA for Consultant's Services. FMPA may use such deliverable for other purposes only after obtaining Consultant's written consent; such consent not to be unreasonably denied.

Section 9. Confidential and Proprietary Information

For purposes of this Section 9, "Confidential Information" means the confidential and proprietary information of a party (including, with respect only to FMPA, the confidential and proprietary information of any one or more of its member municipal electric utility systems, including FMPA), and includes without limitation all data, specifications, calculations, estimates, plans, drawings, construction or technical documents, photographs, summaries, spreadsheets, reports, memoranda, letters, email, and any other documents, instruments, information and materials of any nature whatsoever, whether oral, written or recorded in another medium, relating to the business of a party (including, with respect only to FMPA, the business of one or more of its member electric utility systems, including FMPA) which has been or may afterwards be provided or disclosed in relation to the Services. Each party may disclose its Confidential Information (including, with respect only to FMPA, the Confidential Information of any one or more of its member municipal electric utility systems, including FMPA) (the "Disclosing Party") to the other Party (the "Receiving Party"). Tangible items of Confidential Information may be marked "CONFIDENTIAL" or "PROPRIETARY" or "CONFIDENTIAL AND PROPRIETARY" by either party, except that no such mark is necessary to cause tangible items to be considered Confidential Information if such tangible items are otherwise included in the definition provided in this Section 9.

The Receiving Party agrees that Confidential Information received must be considered confidential and proprietary property of the Disclosing Party and the Receiving Party, unless prohibited by Florida law, shall hold the same in confidence, and shall not use Confidential Information for purposes other than the purposes contemplated by this agreement, which for Consultant is limited to its rendering of the Services to or for FMPA. The Receiving Party, to the extent permitted by Florida law, shall not disclose, publish, or otherwise reveal any Confidential Information to any third party whatsoever except after receipt of the specific prior written authorization of the Disclosing Party. Consultant, as the Receiving Party, further agrees, without limiting the other provisions of this agreement, to not utilize the Confidential Information received in association with the agreement, in any way, for any client other than FMPA and for any matter other than in performance of the Services contemplated hereunder.

Notwithstanding any other provision of this contract, FMPA as the Receiving Party may disclose Confidential Information if necessary, in the opinion of legal counsel for FMPA, to comply with applicable law (including, without limitation, the Florida Public Records Law, Chapter 119, Florida Statutes), order, regulation, ruling, subpoena, or

order of a governmental authority or tribunal with competent jurisdiction. In the event that FMPA as the Receiving Party is requested or required to disclose any Confidential Information, FMPA shall promptly notify Consultant of the request or requirement prior to disclosure, if reasonably possible, so that Consultant may, if it elects, seek an appropriate protective order or other designation of such Confidential Information as containing trade secrets or other commercially sensitive information or otherwise seek to contest, limit or protect the confidentiality of any such requested or required disclosure. All costs of seeking any protective order or other designation and for contesting, limiting, or protecting the disclosure of Confidential Information in response to a valid request to or demand upon FMPA as the Receiving Party shall be borne and paid in full by Consultant. With respect to any disclosure made by FMPA as the Receiving Party pursuant to this Section 9, FMPA shall furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its legal counsel, is consistent with the scope of the request or demand to disclose and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

The Receiving Party has no obligation under this agreement with respect to Confidential Information which (1) is, or becomes publicly available without breach of this agreement by the Receiving Party; (2) is rightfully received by the Receiving Party without obligations of confidentiality; (3) is developed by the Receiving Party without breach of this agreement; or (4) is a public record which Receiving Party is obligated by Florida law to disclose to a third party in the opinion of legal counsel for the Receiving Party; provided however, the Confidential Information described in clauses (1), (2), (3), and (4) of this paragraph shall not be disclosed, in response to a formal request, until 20 days after written notice (as defined in Section 15 herein) of the intent to disclose is given to the Disclosing Party along with the asserted grounds for disclosure (unless pursuant to clause (4) only a shorter response is required by Florida law and the Disclosing Party is given advance notice of such response requirement by the Receiving Party not less than one business day prior to disclosure by the Receiving Party).

Section 10. Insurance

During the performance of the Services under this agreement Consultant, for the protection of FMPA, shall maintain the following insurance.

(a) Commercial General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate for bodily injury and property damage.

(b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for per accident bodily injury and property damage.

(c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance with a limit of \$500,000 for each accident/each employee by disease/policy by disease.

(d) Professional Liability Insurance with per claim and an annual aggregate limit of \$5,000,000.

(e) Consultant, if requested by FMPA by or through a specific Request for Services, shall obtain a quote for project specific professional liability insurance ("Project Specific Insurance Requirements") that will reimburse FMPA for direct damages which may be caused by Consultant's negligence in performing the Services. The proposed limits of liability and coverage period of any Project Specific Insurance Requirements shall be requested by FMPA at the time of the issuance of the Request for Services. Based upon the quote for the project specific policy provided to FMPA by Consultant, FMPA shall decide, within its sole discretion, whether to require Consultant to purchase such Project Specific Insurance Requirements. If purchased, FMPA shall reimburse Consultant for the actual cost of such Project Specific Insurance Requirements.

The Commercial General Liability and Automobile Liability policies shall include FMPA, its directors, officers, agents, and employees as additional insureds to the extent of Consultant's negligence, and to the extent of the insurance limits specified in this Section 10. Consultant shall furnish FMPA certificates of insurance of Consultant's policies covering the stated liabilities, together with the provision that the same shall not be cancelled without at least ten (10) days' written notice to FMPA.

FMPA waives all rights against Consultant and its officers, directors, agents, or employees for damage covered by property insurance (in excess of FMPA's property insurance deductible) during and after the completion of Consultant's Services. Where FMPA enters into other contracts after the effective date of this Agreement for the sole and express purpose of procuring work directly related to a specific Request for Services, FMPA agrees to (a) include a provision similar to this waiver into all other such contracts entered into by FMPA and all FMPA's such contractors and consultants that perform work directly related to the Services shall be required to provide waivers of subrogation in favor of FMPA and Consultant for damage or liability covered by any of FMPA's or Consultant's policies of insurance, and (b) include a provision whereby such contractors or consultants indemnify, defend, and hold Consultant harmless, as well as add Consultant as additional insured, on any such contracts entered into by FMPA for work directly related to the Services, in the same manner, and to the same extent, as FMPA. In no case will such waiver or indemnification provisions be required in other continuing services contracts FMPA enter into, nor will such a requirement be placed upon other contracts entered into by FMPA for services not related the conduct of engineering services.

Section 11. Indemnification

To the fullest extent permitted by law, Consultant, its heirs, successors and assigns shall indemnify and hold harmless FMPA, its successors and assigns, and its employees, against any and all losses, including the bodily injury or death of Consultant during the performance of the Services regardless of cause and/or all damages, costs and judgments (including reasonable attorneys' fees), incurred by FMPA to the extent caused by the negligence, gross negligence or willful misconduct of Consultant while performing work under this agreement. The liability of Consultant is full and complete in all respects and subcontracting any part of the Services shall not relieve it of primary liability.

Section 12. Limitation of Liability

Notwithstanding any other provision of this agreement, and to the fullest extent permitted by law:

(a) FMPA and Consultant shall not be liable to each other for any special, incidental, indirect, or consequential damages, including, but not limited to, loss of profits or revenue; loss of use, loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; cost of replacement power, governmental and regulatory sanctions; and claims of customers for such damages. In addition, to the fullest extent permissible by law, and notwithstanding any other provision of this Agreement or any work order (except as expressly stated otherwise in the Request for Services), the total liability, in the aggregate, of Consultant, its officers, directors, shareholders, employees, agents, subcontractors and subconsultants, and any of them, to FMPA and anyone claiming by, through or under FMPA, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Services or this Agreement or any work order from any claim, including, but not limited to, tort claims, claims of negligence (of any degree), professional errors or omissions, breach of contract, breach of warranty, indemnity claims and strict liability of Consultant, its officers, directors, shareholders, employees, agents, subconsultants, and any of them, shall not exceed:

Request for Services value (\$)	Limitation of Liability (\$)
Less than \$500,000.00	\$1,000,000.00
\$500,000 to \$2,000,000.00	\$2,000,000.00
Greater than \$2,000,000.00	Value of the Request for Services (\$)

(b) FMPA's and Consultant's remedies, obligations and liabilities shall be exclusively those specifically expressed in this agreement, and are in lieu of any others available at law or otherwise.

(c) Upon completion of the Services under a Request for Services or termination or expiration of this agreement, provisions relating to indemnity and limitations of liability, including, but not limited to, Sections 11 and 12, shall survive.

Section 13. Force Majeure

In the event that either Party is rendered unable, wholly or in part, to carry out its obligations under this agreement, or is delayed in its performance under this agreement by Force Majeure, it is agreed that, upon a Party giving notice and full particulars of such Force Majeure in writing to the other Party as soon as reasonably possible after the occurrence of the Force Majeure relied upon, the obligations of the Party giving such notice, so far as those obligations are affected by Force Majeure, shall be suspended during the continuance of the inability so caused, and such obligation suspended because of a Force Majeure shall, to the extent possible, be remedied with all reasonable care and speed by the Party affected by Force Majeure. It is understood and agreed that Force Majeure shall not be relied upon as a basis for any Party's failure or delay in paying any money owed and due hereunder. It is further understood and agreed that Consultant shall be entitled to a change under Section 1 for any schedule and cost impacts due to the Force Majeure.

In the event of any nonperformance caused by any of the forces described as Force Majeure, the Party affected shall within seventy-two (72) hours notify the other Party orally, and within seven (7) Business Days of nonperformance provide the other Party with written confirmation of the nature, cause, date of Force Majeure commencement, and anticipated extent of such nonperformance.

The term "Force Majeure," as used herein, shall mean any and all events which occur without the fault or negligence of the Party claiming Force Majeure, and which by the exercise of due diligence such Party is unable to prevent or overcome including without limitation acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, freezes, washouts, power failure, water shortage or adverse weather conditions, arrests, and restraints of governments and people, civil disturbances, explosions, breakage or accidents, the necessity for making repairs or alterations to machinery or lines of pipe (other than regularly scheduled or routine maintenance), acts of civil or military authority (including, but not limited to, courts or administrative or regulatory agencies), governmental action, delay, restraint, or inaction, unavailability of equipment, and other similar or related causes (unless otherwise explicitly excluded herein), including both their direct and indirect consequences and effects, whether or not enumerated herein. A Party claiming Force Majeure shall utilize reasonable commercial efforts to mitigate the impact of Force Majeure. "Force Majeure" SHALL NOT MEAN OR INCLUDE the negligence, gross negligence or willful malfeasance of a Party or any of its directors, officers, agents, representatives, independent contractors, or employees.

Section 14. Agreement

This Master Services Agreement and each Request for Services issued hereunder, along with FMPA's RFQ 2024-201 and Consultant's response thereto (which are both incorporated herein by reference), shall constitute the final and complete expression of the agreement between FMPA and Consultant relating to the subject matter of this agreement.

In the event of any inconsistency between the terms of this Master Services Agreement, the terms included in any Request for Services issued hereunder, and those additionally set forth in RFQ 2024-201 and Consultant's response thereto, the following order of precedence is hereby agreed: (1) the terms of this Master Agreement, (2) the terms in any Request for Services, and (3) any additional terms set forth in FMPA's RFQ 2024-201 and Consultant's response thereto.

Section 15. Notices

All notices requests, consents, and other communications hereunder ("Notices") shall be in writing and shall be deemed to have been validly served, or given after deposit in the United States mails, postage prepaid, by certified mail with return receipt requested, delivery to an overnight courier, or if transmitted by facsimile transmission facilities or electronic means of transmitting electronic mail messages, and addressed to the Party to be notified as follows:

If to FMPA at: Assistant General Manager of Power Resources
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819-9002
Telephone No. (888) 774-7606 (toll free)
(407) 355-7767
Facsimile No. (407) 355-5793

With a copy to: General Counsel
Florida Municipal Power Agency
2061-2 Delta Way
Post Office Box 3209
Tallahassee, Florida 32315-3209
Telephone No. (877) 297-2012 (toll free)
(850) 297-2011
Facsimile No. (850) 297-2014

If to Consultant: Burns & McDonnell Engineering Company, Inc.
9400 Ward Parkway
Kansas City, MO 64114

With a copy to: Burns & McDonnell Engineering Company, Inc.
Attn: General Counsel
9400 Ward Parkway
Kansas City, MO 64114

Except as otherwise provided in this agreement, any Notices shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (local time and at the place of delivery) or on a non-business day shall be deemed received on the next business day. If any time for giving Notice contained in this agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and holidays recognized by FMPA shall not be regarded as business days. Counsel for FMPA and counsel for Consultant may deliver Notice on behalf of FMPA and Consultant. Any Party or other person to whom Notices are to be sent or copied may notify the other Parties and addresses of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties and addresses set forth in this agreement.

Section 16. General Terms and Conditions

(a) This agreement shall not be assigned in whole or in part except as may be approved in writing by FMPA and Consultant.

(b) No term of this agreement shall be deemed waived, and no breach of this agreement excused, unless the waiver or consent is in writing signed by the other party granting such waiver or consent. The failure or delay of any Party at any time to require performance by another Party of any provision of this agreement, even if known, shall not affect the continuing right of such Party to require performance of that provision or to exercise any right, power, or remedy hereunder.

(c) No amendment to this agreement (including any amendment to this Section) shall be effective unless agreed to in writing by both of the Parties to this agreement.

(d) If any provision of this agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.

(e) This agreement shall be governed by the laws of the State of Florida. All controversies, claims or disputes arising out of this agreement shall be brought exclusively in appropriate court in Leon County, Florida.

(f) This agreement reflects the negotiated agreement of the Parties. Accordingly, this agreement shall be construed as if both Parties jointly prepared it, and no presumption against one Party or the other shall govern the interpretation or construction of any of the provisions of this agreement.

(g) The execution of this agreement has been duly authorized by the appropriate body or official of FMPA and Consultant, both FMPA and Consultant have complied with all requirements of law, and both FMPA and Consultant have full power and authority to comply with the terms and provisions of this agreement.

(h) In the event that either party is required to enforce the terms of this agreement by court proceedings or otherwise, the prevailing party of such proceedings shall be entitled to recover from the non-prevailing party all fees and costs incurred, including reasonable attorney's fees and costs and expenses for trial, alternative dispute resolution and appellate proceedings.

(i) Consultant shall not be responsible for: (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with work related to the Services; (b) the failure of any of FMPA's other contractors or consultants or their respective employees, subconsultants, vendors, or other project participants, not under contract to Consultant, to fulfill contractual responsibilities to FMPA or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction. Consultant shall not have the authority to direct, control or stop the work of FMPA's contractors or consultants or their respective employees, subconsultants or vendors.

(j) Estimates and projections prepared by Consultant relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on Consultant's experience, qualifications, and judgment as a design professional. Since Consultant has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction contractors' procedures and methods, unavoidable delays, construction contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, Consultant does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost estimates and projections prepared by Consultant.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first stated in the introductory paragraph.

FLORIDA MUNICIPAL POWER AGENCY


Signature: Jacob A. Williams
Name: Jacob A. Williams
Title: January 9, 2025

**BURNS & MCDONNELL
ENGINEERING COMPANY, INC.**


Signature: Richard D. Mahaley
Name: RICHARD D. MAHALEY
Title: SENIOR VICE PRESIDENT

ATTACHMENT A
REQUEST FOR SERVICES

Pursuant to the terms and conditions of the Master Services Agreement executed and made effective as of the ____ day of _____, 20__, by and between Florida Municipal Power Agency ("FMPA") and Burns & McDonnell Engineering Company, Inc. ("Consultant"), FMPA hereby requests Consultant to perform the following Services:

- A. Project Scope of Services:
- B. Project Schedule:
- C. Additional FMPA Responsibilities:
- D. Project Compensation:
- E. Project Specific Insurance Requirements (if any):
- F. Is this a Major Project?

This Request for Services and the above-referenced Master Services Agreement constitute the complete understanding of the Parties with respect to the Services specified herein. Terms and conditions contained in purchase orders, work orders, or other documents issued by either Party with respect to the Services shall be of no force and effect.

IN WITNESS WHEREOF, the Parties have executed this Request for Services effective as of the ____ day of _____, 20__.

FLORIDA MUNICIPAL POWER AGENCY

BURNS & MCDONNELL
ENGINEERING COMPANY, INC.

By: _____

By: _____

Title: _____

Title: _____